SUPREME COURT
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In the Supreme Court of the United States

OCTOBER TERM, 1973

74-269

No. A-1293

DR. EARL W. BRIAN, SECRETARY, HUMAN RELATIONS AGENCY, et al.,

Petitioners,

vs.

CALIFORNIA WELFARE RIGHTS ORGANIZATION, et al.,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of California

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In the Supreme Court of the United States

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DR. EARL W. BRIAN, SECRETARY, HUMAN RELATIONS AGENCY, et al.,
Petitioners,

vs.

CALIFORNIA WELFARE RIGHTS ORGANIZATION, et al.,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of California

Comes now petitioner Secretary of Health and Welfare, State of California, and petitioner Director of Benefit Payments, State of California, and respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of California entered in this proceeding on April 16, 1974.

OPINION BELOW

The judgment and opinion of the Supreme Court of the State of California appears as Appendix A hereto and is reported at 11 Cal.3d 237, 520 P.2d 970 (1974).

JURISDICTION

The judgment and opinion of the Supreme Court of the State of California was entered on April 16, 1974. No rehearing in that Court was requested. Mr. Justice Douglas, pursuant to 28 U.S.C. 2101(c), has extended petitioner's time for the filing of this petition to and including September 13, 1974. Appendix B hereto. This petition for certiorari was filed before that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3). Review is sought of a state court decision which invalidated a state departmental administrative regulation which applied to all AFDC recipient children. As an exercise of the state's law-making power, the regulation in question comes within the meaning of "state statute" as used by Congress in 28 U.S.C. 1257(3). See *Hamilton v. Regents,* 293 U.S. 245, 258 (1934); *Northern Pacific v. Dept. of Public Works,* 268 U.S. 39, 42 (1924).

QUESTION PRESENTED

Congress in enacting the AFDC provisions of the Social Security Act of 1935, as amended, requires that the amount of assistance paid by a state be based on the amount needed in the individual case after other income and resources are considered. 42 U.S.C. 602(a)(7). California promulgated welfare regulations which reduced AFDC grants by the value of housing and utility needs shared with an adult aid recipient. The question presented is whether the decision of the Supreme Court of the State of California invalidating this regulation bring the state's welfare laws into conflict with federal law?

STATUTORY PROVISIONS INVOLVED

United States Code, Title 42:

"Section 602(a) A state plan for aid and services to needy families with children must . . . (7) . . . pro-

vide that the state agency shall, in determining need, take into consideration any other income and *resources* of any child or relative claiming aid to families with dependent children, ..." (Emphasis added.)

STATEMENT OF THE CASE

Respondents are California Welfare Rights Organization, an association composed of AFDC welfare recipients, and Jacklyn Jo Shelton, an AFDC recipient. Petitioners are Earl W. Brian, former Secretary of Health and Welfare, State of California, now succeeded by James E. Jenkins, Secretary of Health and Welfare, State of California, and Robert B. Carleson, former Director of Social Welfare, State of California, now succeeded by David B. Swoap, Director of Benefit Payments, State of California. Respondents filed their action for extraordinary relief directly in the Court of Appeal of California, Third Appellate District, to have a certain AFDC welfare regulation declared invalid. Following decision in the Court of Appeal, the Supreme Court of the State of California granted discretionary hearing and entered its judgment and opinion which held the regulations in question invalid on the ground that it conflicted with state law.

The petitioners in the Court of Appeal of the State of California (where respondents filed their original suit), and in the Supreme Court of the State of California, contended that the state court decision erroneously brought the state's welfare laws into conflict with federal law. It was argued that 42 U.S.C. 602(a)(7) and 45 C.F.R. 233.20 (a)(ii)(a) required them to consider the value of housing, utilities, food and clothing which are provided by the mother to the unborn child in determining AFDC eligibility and the amount of aid to be paid to the family. Excerpts from the petitioners' briefs in the Court of Appeal of the

State of California and in the Supreme Court of the State of California are set forth in Appendix C hereto.

Since the children's pro rata expenditure for housing and utilities ($70.00) is less than the value of housing and utility needs provided in a maximum aid payment ($101.00), the AFDC grant to the children was reduced by $31.00. This amount represents the value of the in-kind income to the children resulting from their sharing of housing and utility needs with an adult aid recipient.

In reliance on what it assumed federal law required, California issued administrative regulations which recognized the fetus as a person for AFDC eligibility and grant computation purposes as soon as pregnancy is confirmed. Regulation 44-213.31,[1] Appendix D hereto. See *Burns v. Alcala*, unpublished, CA 8th, March 29, 1974, pet. cert. docketed 73-1595; 42 U.S.C. 606(a), October Term 1973; Appendix E hereto. Under California section 11450 (Appendix F),[2] AFDC payments are computed by a formula which takes into consideration nonexempt income, and size of family,

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1. California Department of Benefit Payments, Public Social Services Regulation, 44-213.31.

2. Unless otherwise indicated, all section references are to the California Welfare and Institutions Code.

The section 11450 schedule of benefits, adjusted for cost of living are:

Size of FBU	Maximum Aid
1	$129
2	212
3	262
4	311
5	355
6	400
7	438
8	477
9	516
10 or more	554

Regulation 44-315.41, Appendix G hereto.

i.e., a pregnant AFDC applicant would count as two persons. Her cash grant plus nonexempt income would total $212.00. A pregnant AFDC recipient with one child would count as three persons whose cash grant plus nonexempt income would total $262.00. California also adopted, pursuant to its view of federal requirements, regulation 44-115.952 (Appendix H hereto) which provided:

> "When an unborn child is included in the FBU [Family Budget Unit], the in-kind deduction [from the AFDC grant] shall be the total of the amounts by which the in-kind values for housing, utilities, food and clothing are increased as a result of including the unborn in the FBU."[3]

In the case of a pregnant recipient with two children, regulation 44-115.95 has the following effect. Prior to becoming pregnant, her three-person family would receive $262.00, less nonexempt income. Upon becoming pregnant, her four-person family would receive $311.00, less nonexempt income, calculated as follows:

Maximum aid	$311.00
Less In-Kind Income to Unborn[4]	40.00
	$271.00
Plus Maximum Special Diet Allowance[5]	9.00
	$280.00

3. Pursuant to the writ of mandate issued in April 1974, by the Supreme Court of the State of California, regulation 44-115.95 was repealed effective June 17, 1974. Regulation revision #2067, effective 6/17/74.

4. Regulation 44.115.9, Appendix J hereto.

Housing	$ 6.00
Utilities	2.00
Food	22.00
Clothing	10.00
	$40.00

5. Regulation 44.265.212, Appendix K hereto.

Absent the $40.00 in-kind income deduction, the four-person family in question would receive $311.00, less nonexempt income. Regulation 44-315.41.

The Supreme Court of California held regulation 44-115.95 inconsistent with state law inasmuch as the value of the resources provided by the pregnant recipient to the fetus was not intended by the California Legislature to constitute countable "income" to the fetus.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW ERRONEOUSLY BRINGS CALIFORNIA WELFARE LAW INTO CONFLICT WITH THE OBJECTIVES OF CONGRESS

The AFDC program is based on a scheme of cooperative federalism. *King v. Smith,* 392 U.S. 309, 316 (1968). State participation in the program is not required at the cost of losing federal funds. As long as a state is receiving federal funds, however, it is under a legal requirement to comply with the federal conditions placed on the receipt of those funds. *Rosado v. Wyman,* 397 U.S. 397, 408 (1970); *Townsend v. Swank,* 404 U.S. 282, 286 (1971).

In administering AFDC programs, state agencies are required in determining need, to "... take into consideration any other income and resources of any child . . . claiming aid to families with dependent children, ..." 42 U.S.C. 602(a)(7).[6] Under HEW regulations, all AFDC plans must specify a state wide standard of need. Both eligibility for AFDC assistance, and the amount of the aid to be paid, are based on a comparison of the "standard of need" with the income and resources available to the applicant or

6. A state AFDC plan must "provide that the state agency shall, in determining need, take into consideration any other income and *resources* of any child . . . claiming aid to families with dependent children, ..." 42 U.S.C. 602(a)(7). (Emphasis added.)

recipient. 45 C.F.R. 233.20(a)(3)(ii)(a).[7] This Court, after noting the language of 42 U.S.C. 602(a)(7) and of the applicable federal regulation, stated:

> "From the inception of the Act, Congress has sought to ensure that AFDC assistance is provided only to needy families, and that the amount of assistance actually paid is based on the amount needed in the *individual* case after other income and resources are considered. (Emphasis in original text; footnote omitted.) Congress has been careful to ensure that *all* of the income and resources properly attributable to a particular applicant be taken into account, and this individualized approach has been reflected in the implementing regulations." *Shea v. Vialpando*, ... U.S. ....., ... (1974).

Neither the federal statute nor regulations define "resources" as used in 42 U.S.C. 602(a)(7). Yet in the related Supplemental Security Income (SSI) program, Congress recognized that the provision of housing, support, and maintenance by a non-aid recipient to an SSI recipient constitutes a resource having value which acts to reduce the SSI aid otherwise payable. Thus 42 U.S.C. 1382(a)(2)(A) provides:

> ". . . that in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) . . . shall be reduced by 33⅓ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph; . . ."

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7. "A state plan for . . . AFDC . . . must . . . [p]rovide that, in establishing financial eligibility and the amount of assistance payment . . . [a]ll income and *resources* . . . will be considered in relation to the state's standard of assistance . . ." 45 C.F.R. 233.20(a)(3)(ii)(a). (Emphasis added.) Appendix I hereto.

Similarly, the pregnant mother provides housing, support, and maintenance "resources" to her unborn child. A newborn baby, if furnished ample housing, utilities, food, and clothing "resources" would not have a "need" for these items under 42 U.S.C. 602(a)(7). Because, the unborn child has these resources made available to him by his mother he does not have a "need" for these items under 42 U.S.C. 602(a)(7). The "needs" of the unborn are substantially less than those of children in being. This difference can validly be measured as equivalent to the value of the resources provided by the mother to her unborn child. The value of these resources under 42 U.S.C. 602(a)(7) must therefore be subtracted by the state from the grant otherwise paid on behalf of the unborn child.

It follows that the decision below erroneously construed state welfare law so as to cause it to come into conflict with paramount federal law.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of California in this cause.

Respectfully submitted,

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(Appendices follow)

Appendix A

Supreme Court Filed Apr 16 1974

In the Supreme Court of the State of California
in Bank
SAC. 7984

California Welfare Rights Organization et al.,
Petitioners,

v.

Earl W. Brian, as Secretary, etc., et al.,
Respondents.

Jacklyn Jo Shelton et al.,
Petitioners,

v.

The Superior Court of Shasta County,
Respondent;
Marian Babiarz, as Director, etc., et al.,
Real Parties in Interest.

In these consolidated cases, certain welfare recipients have challenged the validity, under federal and state law, of welfare regulations issued by the State Department of Social Welfare, which regulations affect the assistance grant to pregnant mothers. We have concluded that the regulations at issue are invalid because they purport to consider, contrary to the probable intent of federal and state law, that the mother's body constitutes a "resource" of the fetus, the

economic value of which "resource" may be deducted from the assistance grant otherwise payable to the mother upon pregnancy.

Petitioner California Welfare Rights Organization (CWRO) is an unincorporated association, representing recipients of aid to families with dependent children (AFDC); this petitioner brought an original action in the Court of Appeal seeking mandamus against respondents Brian (Secretary of the California Health and Welfare Agency) and Carleson (former Director of Department of Social Welfare). Petitioner Shelton, a resident of Shasta County and a recipient of AFDC aid originally brought a class action against Babiarz, the Director of the Shasta County Welfare Department, and respondent Carleson, seeking prohibition to restrain enforcement of the regulations in issue. The trial court denied a preliminary injunction and entered an order which, in effect, permitted the Department to continue to implement its regulations. Petitioner Shelton thereupon joined petitioner CWRO in its action in the Court of Appeal, requesting mandamus against respondents Brian and Carleson, and further sought to prohibit further proceedings in the Shasta County action. The Court of Appeal denied the consolidated petition, and petitioners ask this court to review the matter.

Eligibility for AFDC aid is determined by reference to a table, set forth in section 11452 of the Welfare and Institutions Code, which establishes certain "minimum basic standards of adequate care" depending upon the number of needy persons in the same family. Notwithstanding the amounts set forth in section 11452, however, actual aid payments are limited by another table, set forth in section 11450, which establishes certain "maximum aid" payments, depending upon the number of eligible needy persons in the same home.

Under section 11450, the size of the grant is reduced by any nonexempt "income" of the aid recipient.

The instant case concerns the validity of a regulation promulgated by the Department which purports to determine the existence of, and measure the extent of, an AFDC recipient's "income" to be deducted from his grant under section 11450. The regulation before us attempts to assess the value to an unborn child of the comforts he receives in his mother's womb. We think that, in the absence of express federal or state provisions on the subject, the instant regulation stretches the existing statutory concept of "income" or "resources" beyond the probable intent underlying those terms.

Initially, the parties do not dispute that AFDC assistance properly may be paid to pregnant mothers on behalf of their unborn children. Although the federal Social Security Act (42 U.S.C. § 601 et seq.) is silent on the question, providing for aid to dependent or needy "children" deprived of parental support, or to the relatives who care for them (see *id.*, § 606), regulations promulgated by the Department of Health, Education and Welfare (HEW) seem to permit (but not require) the states to provide for AFDC aid, with federal participation, to or on behalf of unborn children. HEW's regulations provide that "federal financial participation is available in . . . [p]ayments with respect to an unborn child when the fact of pregnancy has been determined by medical diagnosis . . . ." (45 C.F.R. § 233.90, subd. (c), subsec. (2)(ii).) As this language is contained in a subsection of section 233.90 entitled "federal financial participation" rather than in preceding subsections entitled "State plan requirement" or "Condition for plan approval," it seems probable that under federal law, AFDC payments to pregnant mothers on behalf of their unborn children are permissive, not mandatory. In other words, the states may

elect to treat the unborn as other dependent, needy children in administering their AFDC plans.[1]

California has elected to include unborn children in its AFDC plan. Although the applicable statutes refer generally to "needy child" or "children" (see Welf. & Inst. Code, §§ 11202, 11250), the Department has, as early as 1949, interpreted these terms as including unborn children, *and has provided that AFDC aid shall be paid in the event of pregnancy, although in a lesser amount than were the unborn child considered to be an additional member of the family unit.* For example, under former Regulation 44-212.62, a family's "need amount" used for determining the size of the assistance payment was increased $21 monthly upon verification of pregnancy. This regulation remained in effect until 1971, when new regulations were promulgated following the passage of the Welfare Reform Act of 1971. The Department's long-standing administrative practice of providing aid to, *or on behalf of,* the unborn child may, in the absence of any legislative intent to the contrary, be deemed approved by the Legislature and representative of existing state law. (See, e.g., Pearson v. State Social Welfare Board, 54 Cal.2d 184, 210; City of Los Angeles v. Rancho Homes, Inc., 40 Cal.2d 764, 770-771; Coca-Cola Co. v. State Bd. of Equalization, 25 Cal.2d 918, 921.)[2]

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1. Accord Parks v. Harden, ... F.Supp. ....., [41 L.Week 2391]; contra, Alcala v. Burns, ... F.Supp. ....., [42 L.Week 2109]; Doe v. Lukhard, ... F.Supp. ....., [42 L.Week 2179]; Wilson v. Weaver, ... F.Supp. ....., [41 L.Week 2664]. Evidently, only 19 states thus far have elected to provide additional AFDC benefits upon pregnancy.

2. Petitioners point out that, on four prior occasions (and as late as 1971) bills have been introduced to amend the Welfare and Institutions Code to expressly provide that the term "needy child" shall not include an unborn child. Each of these bills died in committee without reaching a vote; one such proposed bill resulted from the recommendation contained in a special committee report to the 1951 Legislature. Thus, we may reasonably assume that the Legisla-

Following the passage of the Welfare Reform Act (which was silent regarding the subject of aid to the unborn), the Department adopted two new regulations. Regulation 44-213.31 provides that, for purposes of AFDC aid, the unborn child shall be considered to be a needy person eligible for aid (without specifying the precise amount of aid to be paid on his behalf). If this regulation were the sole provision on the subject of grants to unborn children, its effect would be to require payment to a pregnant mother without income the full maximum grant otherwise specified for a family of two needy "persons" under section 11450 of the Welfare and Institutions Code.

However, the second regulation, Regulation 44-115.95, would substantially reduce the grant specified under section 11450. Acting solely in reliance upon federal and state provisions which authorize a grant reduction by the amount of nonexempt "income" or "resources" available to the AFDC recipient (see 42 U.S.C. § 602, subd. (a), subsec. (7); 45 C.F.R. § 233.20, subd. (a), subsec. (3)(ii)(c); Welf. & Inst. Code, §§ 11450, 11008), the Department sought to recognize and measure the value *to the fetus* of the "resources" (called "in-kind income" by the regulation) furnished it by the mother, in the form of reduced needs for food, clothing and shelter.

First, Regulation 44-115.9 (not directly challenged in this case) sets forth the Department's estimated "in-kind income" value of particular need items—for example, a value of $76 monthly is specified for "housing" for a family unit consisting of two persons, and $83 monthly for a unit of

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ture has been aware of the Department's administrative construction of the statutory provisions. Its failure to act to modify that construction is indicative of an intent to preserve benefits for unborn children. (See Coca-Cola Co. v. State Bd. of Equalization, *supra*, 25 Cal.2d 918, 922-923; Cal. State Employees Assn. v. Trustees of Cal. State Colleges, 237 Cal.App.2d 530, 536-537.)

three persons. The challenged regulation (44-115.95) provides that "When an unborn child is included in the FBU [family budget unit], the in-kind deduction [from the AFDC grant] shall be the total of the amounts by which the in-kind values for housing, utilities, food and clothing [Reg. 44-115.9] are increased as a result of including the unborn in the FBU." Since the in-kind value of housing for a three-person FBU is $83, the in-kind housing deduction would be $7 for a family consisting of a pregnant mother, her child in being, and her unborn child.

In petitioner Shelton's case, the application of Regulation 44-115.95 results in a substantial reduction in the grant which her family would otherwise receive. Prior to her pregnancy, her three-person family was entitled to a maximum grant of $235 per month (Welf. & Inst. Code, § 11450), less nonexempt "income." If, as required by Regulation 44-213.31, her unborn child were considered to be a "person," her family would receive the $280 maximum grant specified for a four-person family. Yet, under Regulation 44-115.95, her unborn child is deemed to receive "in-kind income" in the total amount of $35. Thus, in net effect, the Shelton family would receive an additional $10 monthly as a result of the pregnancy.[3]

It is well established that administrative regulations must conform to applicable legislative provisions, and that an administrative agency has no discretion to exceed the authority conferred upon it by statute. (California Welfare Rights Organization v. Carleson, 4 Cal.3d 445, 455; Morris v. Williams, 67 Cal.2d 733, 737.) In the instant case, the Department is charged with establishing regulations "not in conflict with the law" fixing statewide standards for

3. The Department's regulations (Reg. 44-265.212) also provide for an additional special diet allowance of $9 maximum per month for pregnant mothers.

the administration of all state or federally assisted aid programs. (Welf. & Inst. Code, § 10604, subd. (b).) We must determine, then, whether Regulation 44-115.95, and its concept of retail "in-kind income," conflicts with state or federal law.

As we have seen, the state AFDC plan contemplates that aid is to be paid to a needy family in accordance with a schedule of maximum grants, depending upon the number of eligible needy persons in the family. (Welf. & Inst. Code, § 11450.) *Since, by virtue of a long-standing departmental practice which we deem to be approved by the Legislature, an unborn child is considered to be eligible for AFDC assistance,* the Department's sole authority for making a deduction from the AFDC grant specified in section 11450 for each eligible recipient would be that there exists "income" or "resources" which may, under federal and state provisions cited above, be taken into account. None of these provisions, however, defines these terms; the state provision simply refers to "income" as including "the value of currently used resources." (Welf. & Inst. Code, § 11008.)

We do not believe it to be probable that the Legislature, in using the general terms "income" and "resources" intended those terms to be employed to exclude, or reduce the AFDC grant to, unborn children. In essence, the additional AFDC grant is really made to the mother, not her unborn child, for the present and future needs arising from pregnancy. Seen in this light, it would be anomalous to hold that the pregnancy generates "income" or "resources" of benefit to anyone, mother or child. We do not mean to suggest that the Legislature could not properly consider the question whether, from a standpoint of policy, the grant to pregnant mothers should be terminated or reduced. In view of the apparent lack of federal guidelines

on the matter, that question would appear to remain a matter of state legislative policy. *Yet the applicable statutes, as we construe them, disclose no intent to treat the unborn any differently than other children. Given the long-standing policy in this state to provide aid on behalf of the unborn child, we conclude that such a child is entitled to be treated as any other "person" for purposes of computing AFDC aid under section 11450.*

We conclude that the following relief prayed for by petitioners should be granted: (1) Let a writ of prohibition issue restraining further proceedings by respondent Superior Court of Shasta County to enforce Regulation 44-115.95; (2) Let a writ of mandate issue ordering respondents Earl W. Brian and David B. Swoap to rescind Regulation 44-115.95 in its entirety.

BURKE, J.

WE CONCUR:
WRIGHT, C. J.
McCOMB, J.
MOSK, J.
CLARK, J.
DEVINE, J.*
MOLINARI, J.*

*Assigned by the Chairman of the Judicial Council

Appendix B

Supreme Court of the United States

No. A-1293

Dr. Earl W. Brian, Secretary, Human Relations Agency, et al.,

Petitioners,

v.

California Welfare Rights Organization, et al.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 13, 1974

/s/ W. O. DOUGLAS
Associate Justice of the Supreme Court of the United States

Dated this 11th
day of July, 1974

Appendix C

Court of Appeal of the State of California
for the Third Appellate District

3 CIV. 13628

California Welfare Rights Organization, an unincorporated association; Catherine Jermany, as President, California Welfare Rights Organization; Jacklyn Jo Shelton, individually, and on behalf of all others similarly situated,

Petitioners,

vs.

Dr. Earl W. Brian, M.D., Secretary, Human Relations Agency; Robert B. Carleson, Director, Department of Social Welfare, State of California,

Respondents.

Jacklyn Jo Shelton, individually, and on behalf of all others similarly situated,

Petitioners,

vs.

Superior Court of the State of California in and for the County of Shasta,

Respondent,

and

Marian Babiarz, Director, Shasta County Welfare Department; Robert B. Carleson, Director, Department of Social Welfare, State of California,

Real Parties in Interest.

POINTS AND AUTHORITIES IN SUPPORT OF RETURN TO ORDER TO SHOW CAUSE

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III. THE DIRECTOR OF THE DEPARTMENT OF SOCIAL WELFARE IS REQUIRED TO AND HAS ESTABLISHED LEGAL STANDARDS FOR EVALUATING IN-KIND INCOME

Section 602(a)(7) of the U.S.C. Title 42 provides that the state agency shall, in determining need, take into consideration any other income and resources of any child, relative or any other individual living in the same home as such child and relative whose needs the state determines should be considered in determining the need of the child.

Section 233.20(a)(3)(ii)(a) of 45 C.F.R. mandates that in establishing financial eligibility and the amount of the assistance payment that all income and resources will be considered and will first be applied to maintenance costs.

Section 233.20(a)(4)(i) of Title 45 of the C.F.R. requires that all income must be considered such as social security or other benefits, earnings or contributions from relatives.

The state is required to comply with these mandatory requirements by the Act, as interpreted and implemented by

regulations promulgated by HEW. *King v. Smith,* 392 U.S. 309, 316-317 [20 L.Ed.2d 1118, 1125-1126, 88 S.Ct. 2128]; *County of Alameda v. Carleson,* 5 Cal.3d 730, 738 (1971); *Calif. Welfare Rights Organization v. Carleson,* 4 Cal.3d 445, 448-449.

Thus under federal law the State is obligated to adopt reasonable methods for ascertaining the resources available to any child claiming AFDC eligibility.

When that income is in money there is no problem attributing value to it. But, when it is in the form of an in-kind income, i.e., when it is in goods or services, its worth must be established. The responsibility for fixing standards for the evaluation of such in-kind income resides in the Director of the Department of Social Welfare.

The Director of the Department of Social Welfare is authorized to "adopt regulations, orders, or standards of general application to implement, interpret, or make specific the law enforced by the department, . . ." (Welf. & Inst. Code § 10554.)

Welfare and Institutions Code section 11452 specifically empowers the department to establish rules and regulations assuring the uniform application statewide of the provisions relating to minimum basic standards.

Welfare and Institutions Code section 11008 in part states:

> "In computing the amount of income determined to be available to support a recipient, the value of currently used resources shall be included. . . ."

Pursuant to this federal and state mandate to establish the value of currently used resources the Director adopted section 44-115.95 of the Public Social Service Manual.

It provides:

> "When an unborn child is included in the FBU, [AFDC Family Budget Unit] the in-kind deduction shall be the

total of the amounts by which the above in-kind values for housing, utilities, food and clothing are increased as a result of including the unborn in the FBU."

The in-kind values are set forth in EAS 44-115.9 through 44-115.94 (Exhibit #1).

Let us consider how this regulation applies. We will use petitioner Shelton as our example. Their FBU consists of Mr. and Mrs. Shelton, who are between 20 and 35 years of age, and one child between 1 and 3 years of age. Prior to the new pregnancy they received a maximum grant of $235. When the new living and separately existing member is added the maximum grant will be increased to $280 to satisfy the increased needs of that person for food, housing, utilities, and clothing.

In the case of the unborn, who has not as yet become a separate existing member of the unit, there are no such needs. Its mother's body supplies it with shelter, clothing and food. This constitutes "satisfied needs" and thus is a "currently used resource" or "in-kind income."

The currently used resource's value is computed as follows:

	FBU of 3	FBU of 4	Difference
Housing	$81	$ 86	$ 5
Utilities	$14	$ 15	$ 1
Food	$83	$103	$20
Clothing	$ 9 per person		$ 9
			$35

This "currently used resource" or "in-kind income" of $35 is subtracted from the maximum grant of $280. The result, $245 is the payment to the FBU which now includes the unborn child. This is $10 more than that unit received prior to the addition of the unborn. But in addition the

mother may receive $9 for special diet. Mrs. Shelton has not applied for nor does she receive such an allowance. She is given all necessary medical care.

Thus the welfare family will receive at least $10 more than it did before the unborn was conceived, and in all probability $19 more than previously. Further the family receives $92 in food stamps which are redeemable at face value for food. The cost of said stamps varies. In the case of the Sheltons in September they cost $52—for a bonus of $40 in free stamps.

The Sheltons had a total grant in September of $255 in cash (the difference of $10 is due to the Welfare Department's staying of its compliance with the new regulation because of this litigation. But the figure is only $10 more than the $245 they should have received under the new regulations, so for purposes of illustration can be here used). They received $92 in food stamps for which they paid $52. Their total value welfare income in September was $295.

The needs of the Shelton family for food according to the standards of the United States Department of Agriculture are:

	Low Cost Plan	Moderate Cost Plan	Liberal Plan
Family of two, 20 to 35 years	$ 19.50	$ 23.60	$ 29.40
Child 1 to 3 years	4.80	5.80	6.90
Plus pregnancy allowance	1.50	1.60	1.70
Weekly Total	$ 25.80	$ 31.00	$ 38.00
Monthly Total	$110.94	$133.30	$153.40

Thus the Shelton family had $184.06 for expenses other than food, if we used the low cost plan for an adequate diet, which is that usually applied in welfare cases. Even applying the liberal plan which "is for families who want and

can afford greater variety, more meats and fruits and vegetables, than the other plans allow", they had $141.60 to cover other expenses.

This regulation is not only imminently fair and reasonable but, further, the presumption is that the Director has properly interpreted the legislative mandate and adopted a regulation reasonably necessary to effectuate the purposes of the statute. *Ralphs Grocery v. Reimel,* 69 Cal.2d 172. Given the statutory mandate from both federal and state law to deduct the value of resources from a grant, it cannot be said that the regulation is contrary to the federal law.

For, as the United States Supreme Court recently held in *Jefferson v. Hackney,* .... U.S. ...., 32 L.Ed.2d 285, 92 S.Ct. 1724 (1972), it is not the function of the courts to strike the proper balance between competing policy consideration. Indeed, the court put it even stronger when it held:

> "In conclusion, we re-emphasize what the Court said in *Dandridge v. Williams,* 397 U.S., at 487:
>
> "'We do not decide today that the [state law] is wise, that it best fulfills the relevant social and economic objectives that [the State] might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court.... [T]he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.'"

In the Supreme Court of the State of California

No. 3 Civ 13628

California Welfare Rights Organization, et al.,
Petitioners,

vs.

Dr. Earl W. Brian, M.D., et al.,
Respondents.

Jacklyn Jo Shelton, et al.,
Petitioners,

vs.

Superior Court of the State of California in and for the County of Shasta,
Respondent,

and

Marian Babiarz, et al.,
Real Parties in Interest.

ANSWER TO PETITION FOR HEARING AND REPLY TO AMICI CURIAE

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B. FEDERAL LAW REQUIRES THAT STATE'S PARTICIPATION IN THE AFDC PROGRAM INCLUDE CONSIDERATION OF RESOURCES.

It is well recognized that the state's participation in the AFDC program is contingent upon meeting federal requirements. *Jefferson v. Hackney,* 406 U.S. 535 (1972); *California Welfare Rights Organization v. Carleson,* 4 Cal.3d 445 (1971); *County of Alameda v. Carleson,* 5 Cal.3d 730 (1971). Federal requirements are set forth in the Social Security Act and the implementing regulations of the Secretary of Health, Education and Welfare.

42 U.S.C. 602(a)(7) provides that the state agency shall, in determining need, take into consideration any other income and resources of any child, relative or any other individual living in the same home as such child and relative whose needs the state determines should be considered in determining the need of the child.

The regulations adopted by the Secretary of Health, Education and Welfare mandate the consideration of resources of an eligible child in establishing the amount of assistance payment. 45 C.F.R. 233.20(a)(3)(ii)(a). That section states:

> "(ii) Provide that, in establishing financial eligibility and the amount of the assistance payment: (a) All income and resources, after policies governing the allowable reserve, disregard or setting aside of income and resources have been applied, will be considered in relation to the State's standard of assistance, and will first be applied to maintenance costs."

As a condition to the continuation of federal grants, state plans must meet federal requirements. The State of California is required to comply with these mandatory requirements of the Social Security Act, as interpreted and implemented by regulations promulgated by the Secretary of

the Department of Health, Education and Welfare. *King v. Smith,* 392 U.S. 309, 316-317 (1968) [20 L.Ed.2d 1118, 1125-1126, 88 S.Ct. 2128]; *Villa v. Hall,* 6 Cal.3d 227, 236 (1971), *vacated* and *remanded,* 406 U.S. 965; 7 Cal.3d 926 (1972); *County of Alameda v. Carleson,* 5 Cal.3d 730, 738 (1971), *appeal dismissed,* 406 U.S. 913; *California Welfare Rights Organization v. Carleson, supra,* 4 Cal.3d 445, 448-449 (1971); *Pearson v. State Social Welfare Board,* 54 Cal.2d 184 (1960).

As this Court stated in *Pearson* in considering the federally assisted categorical aid program for old age security:

> "The state assistance programs involve federal subsidies and they are subject to reasonable federal regulations. (*Cf. Ivanhoe Irr. Dist. v. All Persons,* 53 Cal.2d 692, 713-714 [3 Cal.Rptr. 317, 350 P.2d 69]; *County of Marin v. Superior Court,* 53 Cal.2d 633, 640-641 [2 Cal.Rptr. 758, 349 P.2d 526].) Under both the federal and state acts administrative boards are empowered to promulgate rules, regulations and administrative interpretations. These regulations should be harmonized wherever possible, within the statutory limits established, in order to carry out the cooperative public purpose and law of both sovereigns." *Pearson v. State Social Welfare Board, supra,* 215.

That case held that under both the California and Federal Old Age Security Acts consideration of income and resources was required in determining need. *Pearson v. State Social Welfare Board, supra,* 54 Cal.2d 184, 215-216 (1960).

As Justice Tobriner stated for the Court of Appeal:

> "In view of the federal statute requiring a state to consider 'other income and resources' in determining need, and the subsequent federal ruling that a wife's OASI benefits constitute 'resources' in the circumstance that his wife is an 'essential person' to an applicant, the regulation is no more than a necessary condition to compliance with federal law.

"We turn to respondent's second point: his assertion that the trial court properly concluded that 'promulgation of Section A-212.53 by the . . . Board . . . was an act in excess of the authority delegated to said Board by the legislature . . . .' We shall explain why the board possessed the authority to adopt the regulation in execution of the purposes of the state legislation.

"Section 103 of the Welfare and Institutions Code gives the Social Welfare Board the power and the duty 'to adopt, repeal and amend *such* rules and regulations *which are* consistent with law and *reasonably necessary* for the administration of welfare.' Section 103.1 further states that such rules and regulations 'are adopted to implement, interpret, or make specific the law enforced by the department [Department of Social Welfare] . . . .' Section 2140 authorizes the board to administer the old age security law. These sections clearly endow the board with the power to adopt regulations requisite to compliance with federal law." *Cox v. Social Welfare Bd.*, 193 Cal.App.2d 708, 715-716 (1961).

The same conclusion follows in considering resources in AFDC, also a categorical aid program under the Social Security Act. Federal law mandates that the state plan contain elements to consider such resources in determining the amount of the grant. 45 C.F.R. 232.20(a)(3)(ii)(a).

Appendix D

STANDARDS OF ASSISTANCE

NEED

44-213 (Cont.) Regulations

AFDC

44-213 THE FAMILY BUDGET UNIT (Continued) 44-213

.3 *Needy Persons Living in The Home Who Shall Be Included As "Recipients" In The Same Family Budget Unit, Unless EXCLUDED By Section 44-213.5*

.31 *Children*

All related eligible unmarried children, including the unborn child, for whom aid is requested by the child's parent or relative caretaker. A child receiving restricted income (Section 44-101.2), otherwise eligible, shall, at the option of the parent or relative caretaker requesting aid, be included in or excluded from the Family Budget Unit, with his income.

Appendix E

APPENDIX A

United States Court of Appeals
for the Eighth Circuit
NO. 73-1595

Linda Alcala, Individually and on behalf of all other persons similarly situated,

Appellee,

v.

Kevin J. Burns, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and

Michael Ryan, Individually and in his capacity as Director of the Scott County Department of Social Services,

Appellants.

Jane Doe and Joan Roe,

Appellees,

v.

Kevin J. Burns, Individually and in his capacity as Acting Commissioner of the State of Iowa Department of Social Services; and

Michael Ryan, Individually and in his capacity as Director of the Scott County Department of Social Services,

Appellants.

Appeal from the United States District Court for the Southern District of Iowa.

Submitted: January 15, 1974
Filed: March 29, 1974

Before MATTHES, Senior Circuit Judge, HEANEY, Circuit Judge, and TALBOT SMITH, Senior District Judge.*

MATTHES, Senior Circuit Judge.

This appeal presents the question, much litigated in the district courts recently, whether an unborn child is a "dependent child" within the meaning of § 406(a) of the Social Security Act, 42 U.S.C. § 606(a), thus entitling the expectant mother to receive Aid to Families with Dependent Children (AFDC).

Defendants-appellants, Kevin J. Burns, Acting Commissioner of the State of Iowa Department of Social Services, and Michael Ryan, Director of the Scott County Department of Social Services, acting pursuant to their interpretation of the Employees Manual of the Iowa Department of Social Services, denied such assistance to plaintiffs-appellees, who at the time of application were pregnant and who admittedly would become eligible for benefits once their children were born. Upon denial of benefits, plaintiffs brought this class action in the United States District Court for the Southern District of Iowa charging that defendants' actions violated the Equal Protection and Due Process Clauses of the United States Constitution, and, because inconsistent with § 406(a) of the Social Security Act, 42

*Hon. Talbot Smith, Senior District Judge, Eastern District of Michigan, sitting by designation.

U.S.C. § 606(a), also violated the Supremacy Clause. Plaintiffs sought declaratory and injunctive relief, and monetary damages for assistance wrongfully withheld.

Following a hearing, the district court filed findings of fact and conclusions of law, *Alcala v. Burns*, 362 F.Supp. 180 (S.D. Iowa 1973). Formal judgment was entered adjudging invalid defendants' denial of AFDC payments to plaintiffs and permanently enjoining defendants from further denying AFDC payments to pregnant women who are otherwise qualified for such payments. Defendants have appealed.

I.

As a preliminary matter, we wish to clarify the basis for jurisdiction in the district court, although no question as to jurisdiction has been raised by the parties on appeal. *See United States v. Redstone*, 488 F.2d 300, 301 (8th Cir. 1973); *Williams v. Rogers*, 449 F.2d 513, 517 (8th Cir. 1971), *cert. denied*, 405 U.S. 926 (1972). As was the case in *Doe v. Lukhard*, ... F.2d ..... (4th Cir., Feb. 26, 1974), to our knowledge the initial circuit case to decide the "unborn child" question, plaintiffs here alleged a colorable claim of denial of equal protection within the scope of § 1983 and its jurisdictional counterpart, § 1343 (3), and, accordingly, the district court possessed pendent jurisdiction of the Supremacy Clause claim. Further, whether or not a three-judge court would have been required to determine the constitutionality of defendants' interpretation of the welfare manual, *see Doe v. Lukhard, supra* at n.4, a three-judge court is clearly not required to determine whether that interpretation conflicts with the Social Security Act. *Swift & Co. v. Wickham*, 382 U.S. 111 (1965).

II.

The Social Security Act requires that "aid to families with dependent children * * * be furnished * * * to all eligible individuals * * *." 42 U.S.C. § 602(a)(10).

A triad of Supreme Court cases "establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." *Townsend v. Swank,* 404 U.S. 282, 286 (1971). *See King v. Smith,* 392 U.S. 309 (1968); *Carleson v. Remillard,* 406 U.S. 598 (1972).

If the *King, Townsend* and *Remillard* cases are to govern, it must first be determined that unborn children are "eligible," that is, that they are "dependent children" within the protection of the Act. On this point the courts have differed. Three district courts have ruled that an unborn child is not a "dependent child." *Mixon v. Keller,* No. 74-111-Civ-J-T (M.D. Fla., March 1, 1974); *Murrow v. Clifford,* Civ. No. 114-73 (D.N.J., June 12, 1973); *Parks v. Harden,* 354 F.Supp. 620 (N.D. Ga. 1973) (appeal pending Fifth Circuit). One circuit court and twelve districts courts, including the court below, have decided that an unborn child is a "dependent child." *Doe v. Lukhard, supra, aff'g* 363 F.Supp. 823 (E.D. Va. 1973); *Wisdom v. Norton,* Civ. No. 15906 (D. Conn., Jan. 3, 1974); *Stuart v. Canary,* No. C 72-452 (N.D. Ohio, Dec. 27, 1973); *Whitfield v. Minter,* 368 F.Supp. 798 (D. Mass. 1973); *Carver v. Hooker,* Civ. No. 73-87 (D. N.H., Nov. 30, 1973); *Tapia v. Vowell,* Civ. No. 73-B-169 (S.D. Texas, Nov. 14, 1973) (Preliminary injunction granted pending decision of *Parks v. Harden* by the Fifth Circuit); *Tillman v. Endsley,* No. 73-1476-Civ-CF (S.D. Fla., Oct. 1,

1973); *Jones v. Graham,* Civ. No. 73-L-235 (D.Neb., Sept. 5, 1973); *Green v. Stanton,* 364 F.Supp. 123 (N.D. Ind. 1973); *Harris v. Mississippi State Dept. of Public Welfare,* 363 F.Supp. 1293 (N.D. Miss. 1973); *Alcala v. Burns, supra; Wilson v. Weaver,* 358 F.Supp. 1147 (N.D. Ill. 1972). Courts on both sides of the question have looked to the plain meaning of the word "child" and reached opposite results. The Act itself and the legislative history are unhelpful. Of some note are the Department of Health, Education and Welfare (HEW) regulations implementing the Act which provide: "Federal financial participation is available in: * * * (ii) Payments with respect to an unborn child when the fact of pregnancy has been determined by medical diagnosis * * *." 45 C.F.R. § 233.90(c)(2). The regulations further provide: "Federal financial participation * * * is available in any expenses incurred in establishing eligibility for AFDC, including expenses incident to obtaining necessary information to determine the existence of * * * pregnancy of a mother." 45 C.F.R. § 233.90(c)(3). HEW, however, takes the position that these regulations merely extend an option to the state of including unborn children within its plan and do not mandate such coverage. In fact, as of 1971, 18 states and the District of Columbia furnished AFDC benefits to unborn children, while 34 states and Puerto Rico did not. Brief for HEW as Amicus Curiae, Appendix B, *Murrow v. Clifford, supra.*

We seriously question the right of HEW, as opposed to the unquestioned right of Congress, to decide what benefits are optional. Clearly Congress possesses, and has exercised in the past, the power to give individual states an option to exclude children eligible under the federal standards. *See Townsend v. Swank, supra* at 287-89 and n.5. But there is no indication that Congress has so acted with respect to unborn children.

We ask, as did the district court, from whence can HEW have derived the authority to bestow benefits, albeit supposedly optional benefits, upon unborn children if not from the eligibility provisions of the Social Security Act? We are inclined, in this respect, to accord substantial weight to HEW's understanding, implicit in the regulations, that unborn children are eligible. On the other hand, we are not permitted to defer to the agency's practice of making benefits to eligible persons optional. *Townsend v. Swank, supra* at 286.

We believe that the district court correctly concluded that the term "dependent child" is broad enough to encompass an unborn child and that such coverage is consistent with the purposes of the Social Security Act. The *King, Townsend* and *Remillard* cases, then, determine that defendants' interpretation of the welfare manual, denying benefits to unborn children and their mothers, violates the Supremacy Clause and is invalid.

III.

Although granting declaratory and injunctive relief, the district court refused to order retroactive payment of benefits, citing our case of *Doe v. Gillman,* 479 F.2d 646, 649 (8th Cir. 1973), *petition for cert. filed sub nom. Burns v. Doe,* 42 U.S.L.W. 3205 (U.S. Nov. 5, 1973) (No. 73-406), which avoided deciding whether the Eleventh Amendment prohibits retroactive payments by presuming that the Iowa welfare officials would follow their own regulations which, in the court's view, provided for retroactive payments. Now appellants request this court to decide directly the Eleventh Amendment question. We have already done so in *Anderson v. Graham,* .... F.2d .... (8th Cir., Dec. 20, 1973), holding

that "the Eleventh Amendment deprives the federal court of jurisdiction to award a money judgment against the State for * * * retroactive [AFDC] payments * * *."

The judgment of the district court is affirmed.

A true copy.

Attest:
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

APPENDIX A-1

The District Court opinion and judgment is reported at 362 F.Supp. 180 (S.D. Ia. 1973). The Order, as originally filed, misquoted the Social Security Act. The Court underscored and misquoted the crucial word "prenatal" for the correct word "parental". [Title 42 U.S.C. § 601] A correcting order was filed after Notice of Appeal was filed and prior to publication in the Federal Reporter.

Appendix F

§ 11450. Table of amount of aid: Increases or decreases commensurate with federal contributions: Payment for children receiving "foster care": Special needs allowances

(a) For each needy family which includes one or more needy children qualified for aid under this chapter, except as provided in Section 11403, there shall be paid, notwithstanding minimum basic standards of adequate care established by the department under Section 11452, an amount of aid each month which when added to his income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (d) of this section or Section 11453.1, is equal to the sums specified in the following table, as adjusted for cost-of-living increases or decreases pursuant to Section 11453:

Number of eligible needy persons in the same home	Maximum aid
1	$117
2	192
3	237
4	282
5	322
6	362
7	397
8	432
9	467
10 or more	502

If, when and during such times as the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to such increase or decrease by the United States

government, provided that no such increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(b) For children receiving foster care who are qualified for aid under the provisions of this chapter, except as provided in Section 11403, there shall be paid the sum necessary for the adequate care of each child, but not to exceed in any month the product of one hundred twenty dollars ($120) multiplied by the number of children in each county receiving foster care. The state shall pay 67.5 percent and the county shall pay 32.5 percent of the aid furnished for the adequate care of such children.

(c) As used in this chapter, "foster care" means care in a boarding home or institution.

(d) (1) In addition to the amounts payable under subdivision (a) of this section and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. The county shall pay the full cost of the additional aid furnished needy families pursuant to this subdivision after first deducting therefrom any funds received from the federal government. Such recurring special needs shall include but not be limited to special diets upon the recommendation of a physician, and unusual costs of transportation, laundry, housekeeping service, telephone, and utilities not to exceed the minimum basic standards of adequate care.

(2) A family shall also be entitled to receive an allowance, at county expense after first deducting therefrom any funds received from the federal government, for nonrecurring special needs caused by sudden and unusual circumstances beyond the control of the needy family; provided, however, that such needs shall not be taken into consideration in determining the eligibility of the family for aid.

(3) The department shall establsh rules and regulations assuring the uniform application statewide of the provisions of this subdivision.

(e) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a) of this section.

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

Amended Calif. Stats 1973-74 ch 75 § 1, effective May 31, 1973 operative June 1, 1973.

Appendix G
ASSISTANCE GRANTS
AID PAYMENTS

Regulations 44-315 (Cont.)

Determining Amount of Grant—Child Living With Parent or Relative

44-315.41 *Child Living With Parent or Relative (Basic Cash Grant)*

Calculate the amount of the basic cash grant as follows:

.411 Based on the size of the FBU (see Section 44-213.3) find the maximum aid in the following table:

Size of FBU	Maximum Aid
1	$129
2	212
3	262
4	311
5	355
6	400
7	438
8	477
9	516
10 or more	554

Appendix H

STANDARDS OF ASSISTANCE
INCOME

44-115 (Cont.) Regulations

44-115.952 In all other cases where an unborn child is included in the FBU, the in-kind deduction shall be the total of the amounts by which the above in-kind values for housing, utilities, food and clothing are increased as a result of including the unborn in the FBU.

Appendix I

45 C.F.R. 233.20(a)(3)(ii)

"(a) Requirements for State Plans. A State Plan for . . . AFDC . . . must, as specified below:

"(3) Income and resources; . . . AFDC . . .

"(ii) Provide that, in establishing financial eligibility and the amount of the assistance payment: (a) All income and resources, after policies governing the allowable reserve, disregard or setting aside of income and resources have been applied, will be considered in relation to the State's standard of assistance, and will first be applied to maintenance costs; (b) if agency policies provide for allocation of the individual's income as necessary for the support of his dependents, such allocation shall not exceed the total amount of their needs as determined by the statewide standard; (c) only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered; . . ."

Appendix J

STANDARDS OF ASSISTANCE
INCOME

Regulations 44-115 (Cont.)

44-115 EVALUATION OF INCOME IN KIND (Continued) 44-115

.9 For purposes of this section, the following shall be considered as the in-kind income value of certain items of need for an FBU:

.91 *Housing*

a. one-person FBU—$61/per month
b. two-person FBU—$82/per month
c. three-person FBU—$89/per month
d. four-person or larger FBU—$95/per month

.92 *Utilities (including telephone)*

a. one-person FBU—$13/per month
b. two-person FBU—$14/per month
c. three-person FBU—$15/per month
d. four-person or larger FBU—$17/per month

.93 *Food*

a. one-person FBU—$34/per month
b. two-person FBU—$74/per month
c. three-person FBU—$93/per month
d. four-person FBU—$115/per month
e. five-person FBU—$139/per month
f. six-person FBU—$162/per month
g. seven-person FBU—$179/per month
h. eight-person FBU—$197/per month
i. nine-person FBU—$215/per month
j. ten-person or larger FBU—$232/per month

.94 *Clothing*

a. one-person FBU—$10/per month
b. two-person FBU—$20/per month
c. three-person FBU—$30/per month

d. four-person FBU—$40/per month
e. five-person FBU—$50/per month
f. six-person FBU—$60/per month
g. seven-person FBU—$70/per month
h. eight-person FBU—$80/per month
i. nine-person FBU—$90/per month
j. ten-person or larger FBU—$101/per month

Appendix K

STANDARDS OF ASSISTANCE NEED

44-265 (Cont.) Regulations

44-265

.212 The special need allowance for a therapeutic diet shall be limited to the following types and maximums:

$15 maximum for one of the following diets:

Diabetic, 2200 calories or more
High caloric—high protein (including special formula for infant)
Lactation (while breast feeding)

$ 9 maximum for one of the following diets:

Diabetic, under 2200 calories
Bland
Low fat—cholesterol
Low salt (sodium, under 3 grams)
Pregnancy